

Sponsored by: Puto

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2005-076**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AND ACCEPTING A LOT DENSITY REDUCTION ROGO ALLOCATION RESTRICTIVE COVENANT FROM JAMES AND ASHMA SHEPHERD, AUTHORIZING ITS RECORDING IN THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA**

**WHEREAS**, pursuant to Section 9.5-127(a)(4) of the City Code, a landowner may elect to voluntarily reduce the density on a lot permitted as of right to receive additional points as part of the Residential Rate of Growth Ordinance ("ROGO") allocation process; and

**WHEREAS**, if a landowner proposes to reduce the density as set forth above, the landowner is required to execute a legally binding restrictive covenant limiting the density on this property running in favor of, and enforceable by, the City that must be approved by the City Council prior to its recording in the public records of Monroe County, Florida; and

**WHEREAS**, James and Ashma Shepherd have applied for a market rate ROGO allocation and have elected to reduce the density of their property.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

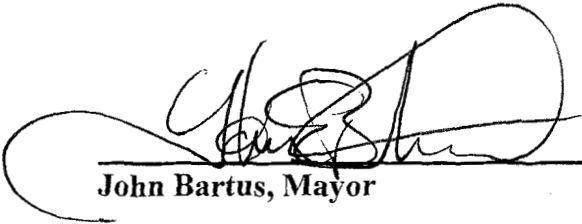
**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** Subject to the review and approval of the City Attorney, the restrictive covenant submitted by James and Ashma Shepherd attached hereto and incorporated herein as Exhibit "A" is approved and accepted by the City Council. James and Ashma Shepherd shall record, at their sole expense, the restrictive covenant in the public records of Monroe County, Florida.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 28<sup>th</sup> day of June, 2005.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartus, Mayor**

AYES: Mearns, Miller, Pinkus, Bartus  
NOES: None  
ABSENT: Bull  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE  
CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
CITY ATTORNEY

This instrument prepared by,  
and after recording return to:

City Clerk  
City of Marathon, Florida  
10045-55 Overseas Highway  
Marathon, Florida 33050

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made and entered into this 21<sup>st</sup> day of June, 2005 by JAMES & ASHMA SHEPHERD, whose principal mailing address is 1926 INNWOOD RD, ATLANTA, GEORGIA 30329 ("Declarant").

**RECITALS:**

1. Declarant is the fee simple title owner to certain real property (the "Property") located in City of Marathon, Monroe County, Florida, (the "City") which is more particularly described as:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A"

2. Declarant is the recipient of a fair market residential unit allocation pursuant to the City's Rate of Growth Ordinance ("ROGO").

3. The Property was assigned additional ROGO points for the voluntary reduction of density through the aggregation of vacant, legally platted buildable lots.

4. In connection with the ROGO allocation award, Declarant desires to subject the Property to the restrictions, covenants, and conditions hereinafter set forth, each and all of which is and are for the benefit of the Property.

**NOW, THEREFORE**, the Declarant declares that the Property shall be held and conveyed subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

- Restriction.** Declarant hereby covenants, agrees and certifies, in so far as the rights, powers, interests and authority of the Declarant is concerned, that development of the Property shall be limited to one (1) single-family dwelling structure, which use shall be limited to that of a single-family residence. Accordingly, the allowable density of the Property is hereby reduced from 2 SFR ~~per acre~~ to 1 SFR per acre. The construction of or the use of the property for, a duplex or other multi-family dwelling structure is prohibited.

2. **City.** This Declaration is intended to benefit and run in favor to the City.
3. **Enforcement.** This Declaration may be enforced by the City at law or in equity or as a code compliance action against any party or person violating, or attempting to violate, any of the covenants and restrictions contained herein. The remedies available to the City shall include, but are not limited to, obtaining a court order requiring the Declarant or his/her successor or assigns to comply with the density restriction set forth above, and compelling the Property's continuing compliance with the density restriction until this Declaration has expired. The prevailing party in any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, reasonable attorneys' fees and costs as well as attorneys' fees and cost incurred in enforcing this prevailing parties attorneys' fees provision. This enforcement provision shall be in addition to any other remedies available at law or in equity.
4. **Term.** The restrictions, covenants and conditions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded.
5. **Amendments.** All amendments hereto shall be in writing and must be signed by the Declarant and the City. All amendments hereto shall be recorded in the Public Records of Monroe County, Florida, and shall not be valid until recorded.
6. **Paragraph Headings.** Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way define, limit or describe the scope and intent of the particular paragraph to which they refer.
7. **Effective Date.** This Declaration will become effective upon the recordation of this Declaration in the Public Records of Monroe County, Florida.
8. **Governing Law.** This Declaration and the enforcement of the rights and obligations established hereby shall be subject to and governed by the laws of the State of Florida.
9. **Recordation.** Declarant shall, at its sole cost and expense, record this Declaration in the Public Records of Monroe County, Florida within five (5) days of approval of the same by the City. Declarant shall provide the City with proof of the recording of the Declaration in accordance with the provisions of this paragraph.



**EXHIBIT "A"**

Legal description of properties:

Lot 17, Block 1, Crains Subdivision PB1-51 of Grassy Key PT Sections 24-25-26, TWP  
65S R 33E OR199-307-308 OR1614-617/18R/S (JMH) OR1614-619/21/AFF(JMH)  
RE# 00366960-000000246533

Lot 18, Block 1, Crains Subdivision PB1-51 of Grassy Key PT Sections 24-25-26, TWP  
65S R 33E OR199-307-308 OR1614-617/18R/S (JMH) OR1614-619/21/AFF(JMH)  
RE# 00366970-000000246533